



# KENNEBUNK POLICE DEPARTMENT

<b>Subject:</b>	<b>Response To Mental Illness &amp; Involuntary Commitment</b>	<b>Policy #</b>	<b>0-12</b>
<b>Effective Date:</b>	<b>November 8, 2021</b>	<b>Review Cycle:</b>	<b>2 Years</b>
<b>Distribution:</b>	<b>All Sworn Personnel</b>	<b># of pages:</b>	<b>7</b>
<b>MLEAP:</b>	<b>7.33.A, 7.33.B, 7.33.C</b>	<b>MCJA Mandatory Policy</b>	
<b>Rescinds All Previous Policies Related To This Current Policy</b>			
<b>Issuing Authority:</b>	<b>Chief of Police Robert MacKenzie</b>		

**I. PURPOSE:**

To establish guidelines for officer's during interactions with persons suspected of being mentally ill or experiencing a mental health crisis, to assist the person and protect the public.

**II. POLICY:**

It is the policy of the Kennebunk Police Department to attempt to assist persons who are known or suspected to be mentally ill, particularly persons who present a threat of imminent and substantial physical harm to themselves or others. Due to the unpredictable nature of these types of contacts, officer's need to consider their safety, the safety of others and the safety of the mentally ill person. A minimum of two officer's shall be assigned to such calls, including one CIT Officer, as available. The on-duty patrol supervisor should also be notified.

**III. DEFINITIONS:**

- A. **Advanced Health Care Directive:** An individual instruction from, or power of attorney for health care by, an individual with the capacity for use when the person lacks capacity.
- B. **Crisis Intervention Officer (CID) / Team (CIT):** Officer is specially trained in the identification, handling, de-escalation and disposition of individuals exhibiting signs of a mental health crisis.
- C. **The threat of Imminent and Substantial Physical Harm:** Any condition creating a foreseeable risk of harm to someone, taking into consideration the *immediacy, seriousness, and likelihood* of the potential harm, if not prevented. Threatened harm may include suicide or serious self-injury; violent behavior or placing others in reasonable fear of serious physical harm; and reasonable certainty of severe impairment or injury because a person is unable to avoid harm or protect themselves from harm.
- D. **Involuntary Commitment (Blue Paper Process):** A three-step process by which 1) Any person (friend, relative, social services worker, LEO, etc.) applies for admission for an individual to a mental hospital, 2) Clinician evaluates the individual, usually at a local hospital, and 3) If the clinician certifies that the individual is mentally ill and poses a likelihood of harm, a judicial officer reviews and, as appropriate, endorses the paperwork reflecting the first 2 steps. These three steps are reflected on sections 1, 2, and 3 of the "blue paper," an application for Emergency Involuntary Admission to a Mental Hospital, form MH-100.
- E. **Least Restrictive Form of Transportation:** A vehicle and any restraining devices used during transportation that impose the least amount of restriction, taking into consideration the stigmatizing impact upon the individual being transported.
- F. **Mental Health Crisis:** Behavior that a reasonable person would perceive as presenting a threat of *imminent and substantial* physical harm to the person exhibiting the behavior or another person and that appears to be of sufficient severity to require professional assistance. This may include but is not limited to loss of contact with reality, abnormal memory loss, delusions (belief in thoughts or ideas that are false), hallucinations, extreme agitation, rigidity or inflexibility, severe depression,

imminent suicidal or homicidal statements or actions; or an inability to control behavior or avoid or protect one from impairment or injury.

- G. **Mentally Ill Person:** Sometimes referred to as a "consumer," this is a person having a psychiatric or other disease (e.g., persons suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol) which substantially impairs their mental health and ability to think rationally, exercise adequate control over behavior or impulses (e.g. aggressive, suicidal, homicidal, sexual), and/or take reasonable care of their welfare with regard to basic provisions for clothing, food, shelter, or safety.
- H. **Probable Cause:** The standard required to take a person into protective custody, based on the totality of the circumstances, which may include, but is not limited to 1) personal observation; 2) reliable oral or written information from third parties (as long as the third party has reason to believe, based upon recent personal observations or conversations with the person, that the person may be mentally ill and that, due to that condition, the person presents a threat of imminent and substantial physical harm); and 3) any known history of the person experiencing the mental health crisis.
- I. **Protective Custody:** A law enforcement officer taking a person into custody when the officer determines that probable cause to believe the person is mentally ill and, due to that condition, the person poses a "likelihood of serious harm." "Likelihood of serious harm" is the existence of.
  - 1) Substantial risk of physical harm to the person as manifested by recent suicide attempts or threats or serious self-inflicted harm, or
  - 2) A substantial risk of physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct placing others in reasonable fear of serious physical harm, or
  - 3) A reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the person from impairment or injury.

**MLEAP 7.33.A**

#### **IV. PROCEDURES:**

##### **A. Recognizing Unusual Behavior:**

- 1. Mental illness is often difficult for even the trained professional to define in everyone. Officers are not expected to diagnose a mental condition or disturbance but should attempt to recognize behavior that is potentially destructive and dangerous and/or indicative of a mental health crisis.
- 2. Officer's must recognize that a person may exhibit unusual behavior because of a mental or physical disease or condition but should not rule out other potential causes. Officer's should evaluate the behavior in the total context of the situation when making judgments about an individual's mental state and the need for intervention. The behavior may or may not be criminal and may or may not pose a risk of imminent and substantial physical harm to that person or others.
- 3. Officer's should be cognizant of the rights of people with disabilities under the Americans with Disabilities Act (ADA) and other applicable Federal and State laws.

##### **B. Determining Danger:**

- 1. When dealing with a person with mental illness, as with any situation, Officer's should constantly assess any threats, behavior and individual actions based upon the totality of the circumstances.
- 2. The assessment and response to any such threats, behavior and individual actions must be consistent with the Kennebunk Police Department Use of Force Policy.

##### **C. Interacting with the Mentally Ill:**

- 1. When dispatched to a possible mental health call, officers should assess the situation to determine whether a crime has been committed and/or whether the person requires medical or psychological evaluation or treatment. When available, a CIT Officer should be assigned or requested to assist at the scene of all such calls.

2. Officer's should be aware of the following guidelines when dealing with a person in crisis:
  - a. Whenever possible, take steps to calm the situation and not provoke the person. Attempt to eliminate emergency lights and sirens, disperse any crowds, and assume a non-threatening manner. Move slowly and avoid physical contact, as possible.
  - b. Request a backup officer, especially in cases when the individual will be taken into custody.
  - c. Communicate with the individual and, unless otherwise directed by a supervisor, make it a priority to utilize the time necessary to assess the situation and attempt to de-escalate the subject. Provide reassurance that the Chief of Police's Office is there to help. Attempt to avoid topics that may agitate the person and always attempt to be truthful.
  - d. When possible, gather information not only from the individual but from available family members and/or acquaintances.
  - e. If there are any doubts about how a particular incident or subject should be dealt with, officer(s) should request that a supervisor come to the scene to provide guidance or make a final determination.

#### **D. Referrals / Protective Custody / Emergency Hospitalization:**

1. Based on the overall circumstances, officer's must assess each situation and use their training, experience, and discretion to resolve the call best, taking steps to maximize the safety of the persons involved and the public. Dispositions will include.
  - a. Voluntary transports to a hospital or mental health provider.
  - b. Contacting the **Maine Crisis Line 1-888-568-1112** for assistance and/or guidance.
  - c. Leaving the person in the care of friends, relatives or service providers.
  - d. Providing the individual and/or family members with referrals to available community mental health resources.
  - e. Taking the person into protective custody.
  - f. Taking other appropriate steps to maintain the safety of the public and persons involved.
2. If a officer has reasonable grounds to believe, based upon probable cause, that a person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or others, or if a officer knows that a person has an advance healthcare directive authorizing mental health treatment and the officer has reasonable grounds to believe, based upon probable cause, that the person lacks capacity,<sup>1</sup> the officer may take that person into protective custody<sup>2</sup> and present that person to a duly licensed physician, a licensed clinical psychologist, a physician's assistant, a nurse practitioner or a certified psychiatric clinical nurse specialist, without undue delay and by the least restrictive means possible. **MLEAP 7.33.A**
  - a. In general, once a decision has been made to take an individual into custody, it should be done as soon as possible to avoid prolonging a potentially volatile situation. Persons taken into protective custody will be transported to the hospital by the least restrictive means possible.
  - b. An officer may have authority to enter a premise under the protective custody statute if there was probable cause to believe that a person inside the premises may be mentally ill and that, due to that condition, the person presents a threat of imminent and substantial physical harm to that person or another person. A warrantless entry and search for the person may be authorized in such an exigent circumstance if there is an imminent threat to the life or safety of members of the public, the officer's, or a person located within the premises.
3. For the Kennebunk Police Department, the default hospital for mental health crisis evaluations will be the **Southern Maine Health Care (Biddeford), or Maine Medical Center (Portland)**, unless there is an articulable reason to do otherwise, in which case the patrol supervisor should be consulted. In any case, the officer should request that dispatch advise the destination hospital of the officer's anticipated arrival. In all such transports, the officer will communicate directly with hospital staff,

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<sup>1</sup> See Title 18-A, M.R.S.A., §5-801 and 5-802

<sup>2</sup> Officer's shall be familiar with 34-B M.R.S.A., §3862, *Protective Custody*.

providing them with a CIT Report, and completing other requested documentation. Under no circumstances will an officer provide transport and drop off any person at a hospital without contacting hospital staff.

**MLEAP 7.33.B**

4. Officer's may use their discretion on the method of transporting an individual taken into protective custody. They may either transport individuals in their patrol vehicles when warranted or may request EMS to transport the individual. Officer's shall refer to *Prisoner Transport Policy* for either method of transportation. **MLEAP 7.33.C**
5. If the person taken into custody has committed a criminal act, the officer, in conjunction with the on-duty Shift supervisor and duly licensed practitioner, shall determine the most appropriate confinement condition to satisfy the protection of the public and the treatment of the person. Options would include a Bail Commissioner being called to set bail; issuance of a USAC, or P.R. bail and release (Class D and E crimes).
6. If after being evaluated, the practitioner determines that the person does not warrant an involuntary commitment, the officer shall release the person from protective custody and, with the person's permission, return the person to where the person was taken into custody or to the person's residence, if in Kennebunk, and if an officer is readily available. If, however, the person is also under arrest for a violation of law, the person may be retained in custody until the person is detained or released by the law and other procedures. It should be noted that whenever an officer delivers a person in protective custody to the hospital for involuntary commitment, and the hospital does not admit but releases the person, the hospital is required to notify the Kennebunk Police Department.<sup>3</sup>
7. If after being evaluated, the practitioner opts to involuntarily commit the person, the officer may be asked to assist with the involuntary commitment ("blue paper") process.<sup>4</sup> A officer, relative or another person may start the process by stating their probable cause for this type of an evaluation on the "Blue Paper" (i.e., that the person is mentally ill and, because of the person's illness, poses a likelihood of serious harm). Once the evaluation is completed, the appropriate section on the "Blue Paper" is then completed by the authorized practitioner. The "Blue Paper" is then signed by a judge or a complaint justice. Copies are given to the evaluator, the judge, the officer, and to the location where the person will be transported. Law enforcement agencies are eligible for the reimbursement costs for this involuntary commitment process.<sup>5</sup>

#### **E. Reporting / Follow-up:**

1. An AR report including a narrative shall be completed whenever a officer responds to a call involving a person in a mental health crisis, whether the person is formally arrested, taken into protective custody, or voluntarily transported to the hospital. In all other cases when the situation was informally resolved an OF will be completed. In all cases where a person is taken into custody (protective custody or arrest), the officer's report shall provide sufficient detail to establish probable cause. Refer to *Preliminary Investigations Policy*.
2. A **Protective Custody Intake Form** (Appendix #1) shall be completed as follows:
  - a. Whenever a person in mental health crisis is **involuntarily** taken into protective custody.
  - b. Whenever a person in mental health crisis is transported to a hospital, **voluntarily**.
  - c. Whenever a person in mental health crisis is arrested.
  - d. By any officer requesting crisis intervention follow-up on a specific incident or person.
3. Whenever a person is transported to the hospital, whether voluntarily or involuntarily, the officer completing the Protective Custody Intake Form shall provide a completed copy of the Protective Custody Intake Form to the hospital's evaluation staff before leaving the hospital. Based on the circumstances, or as otherwise deemed necessary and appropriate by the officer or a supervisor, the officer may also provide the hospital with copies of any related narrative reports and/or supporting documents (e.g., witness statements, prior calls for service, etc.). Officer's should note what information was given to the hospital in their narrative report(s).

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<sup>3</sup> 34-B, M.R.S.A., §3863(6-A)

<sup>4</sup> 34-B, M.R.S.A., §3863

<sup>5</sup> 34-B, M.R.S.A., §3863

4. The original Protective Custody Intake Form shall be attached to the AR in IMC.

**F. Training:**

1. All department personnel should strive to maintain proficiency in interacting with people in a mental health crisis.
2. Crisis Intervention Officer's (CID / CIT) must complete an initial 40-hour certification course, followed by relevant, ongoing training.

<b>SUBJECT NAME</b>		<b>DOB</b>		<b>CASE #</b>	
<b>ADDRESS</b>		<b>TOWN</b>		<b>DATE/TIME OF INCIDENT</b>	
<b>LOCATION OF INCIDENT</b>		<b>POLICE DEPARTMENT</b>		<b>OFFICER NAME</b>	
<b>MEDICAL FACILITY NAME</b>		<b>DOCTOR NAME</b>			
<b>MENTAL ILLNESS</b>	Yes No Unknown	<b>Prior LE Contacts</b>	Yes No Unknown		
<b>KNOWN DIAGNOSIS</b>	Depression Bipolar Anxiety/Panic <input type="checkbox"/> PTSD <input type="checkbox"/> Substance Dependence Mental Retardation Schizophrenia Other _____ Unknown	<b>PENDING CRIMINAL CHARGES</b>	No <input type="checkbox"/> Yes <input type="checkbox"/> List _____		
<b>THREAT ASSESSMENT</b>	None Suicide Threat Suicide Attempt Threat/Harm to Others Threat/Harm to Police Threat/Harm to Family Threat/Harm to Medical Staff Expressed Hopelessness	<b>INJURIES</b>	Self-Injury Bystander Injury Police Injury Relative Injury Medical/EMS Injury Hospitalized Not Hospitalized		
<b>SUBSTANCE ABUSE</b>	Alcohol Marijuana Cocaine/Crack Methadone Prescription Med's Heroin Other _____	<b>WEAPON/METHOD</b>	Firearm Edged Weapon Overdose Hanging Jumping Police Traffic Other _____		
<b>BEHAVIOR SIGNS AND/OR INDICATORS</b>	Intoxicated/Impaired Threats to Self Threat to Others Confused Speech Irrational Statements Irrational Behavior Unable to Care for Self Recent Negative Life-Changing Events (Divorce, Job Loss, Death of Spouse, etc.)	<b>PRIOR HISTORY</b>	Suicide Attempts LE Protective Custody LE Non-Protective Custody Prior Violence Arrests Self Injury DV Assault Psychiatric History		
		<b>CURRENT COURT ORDERS</b>	Protection from Abuse Protection from Harassment Criminal Trespass Notice		
<b>CURRENT MEDICATIONS</b>	Taking Not Taking Overdosing Under Dosing	The above person was taken into protective custody pursuant to 34-B M.R.S.A., § 3862. I have probable cause to believe that the person may be mentally ill and that due to that condition the person poses a likelihood of serious harm, or I am aware that the above person has an advance health care directive authorizing mental health treatment and I have probable cause to believe that the person lacks capacity. "Serious harm" means (1) a substantial risk of physical harm to the person as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm, or (2) a substantial risk of physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct placing others in reasonable fear of serious physical harm, or (3) a reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the person adequately from impairment or injury.			
<b>Narrative Details</b>					
<b>Provide a BRIEF incident overview to establish probable cause for protective custody</b>					
<b>Use Specific Suicidal or other comments made by the individual</b>					
_____					
_____					
_____					
_____					
_____					
<i>Copies should be retained by the transporting Law Enforcement Officer and the medical facility</i>					
<b>OFFICER SIGNATURE</b>		<b>DOCTOR/ ADMITTING NURSE SIGNATURE</b>	(Receipt acknowledged)		

**STATE OF MAINE  
APPLICATION FOR EMERGENCY INVOLUNTARY ADMISSION TO A MENTAL HOSPITAL**

**1. Application.**

I hereby apply under 34-B M.R.S.A. § 3863 for emergency admission of \_\_\_\_\_  
to \_\_\_\_\_ Proposed patient  
Mental hospital I believe that the proposed patient has a mental illness and therefore  
poses a likelihood of serious harm because \_\_\_\_\_

Grounds for belief, including nature of illness and harm

\_\_\_\_\_  
Date Applicant's printed name Applicant's signature Applicant's capacity

Name and address of proposed patient's guardian, spouse, parent, adult child, next of kin, or friend:  
\_\_\_\_\_

**2. Certifying Examination. I hereby certify that:**

(a) I am a licensed \_\_\_\_\_ and that I examined \_\_\_\_\_ today.  
MD/DO/PhD/PA/NRN/CS Proposed patient

(b) My opinion is that the proposed patient has a mental illness and that

[suicide, self injury] the illness causes a substantial risk of physical harm to the proposed patient because

\_\_\_\_\_  
Symptoms and grounds, including recent actions or behaviors (threats of or attempts at suicide or serious bodily harm) caused by illness

[harm to others] the illness causes a substantial risk of harm to others because \_\_\_\_\_

\_\_\_\_\_  
Symptoms and grounds, including recent actions or behaviors caused by illness that placed others in reasonable fear of violent behavior or serious harm

[self protection] the illness creates a reasonable certainty that the proposed patient will suffer severe physical or mental injury or impairment because \_\_\_\_\_

\_\_\_\_\_  
Symptoms and grounds, including recent actions or behaviors caused by illness showing proposed patient's inability to protect self from harm

(c) I have confirmed that adequate community resources are unavailable for care and treatment of this person's mental illness.

(d) I believe that \_\_\_\_\_ is the least restrictive form of transportation for the patient's clinical needs.  
Ambulance or other (please specify)

\_\_\_\_\_  
Date Time Examiner's printed name Examiner's signature

**3. Judicial Review and Endorsement.**

Upon review pursuant to 34-B M.R.S.A. § 3863(3), I find this application and certificate to be regular and in accordance with the law, and I hereby authorize \_\_\_\_\_ to take

\_\_\_\_\_  
Person authorized to take proposed patient into custody  
\_\_\_\_\_ into custody and transport him or her to \_\_\_\_\_  
Proposed patient Mental hospital

\_\_\_\_\_  
Date Time Judicial officer's printed name Judicial officer's signature Judicial officer's capacity (District, Probate or Superior Court Judge or Justice; Justice of the Peace)

## **WEAPONS RESTRICTION ORDER**

*(Protection from Substantial Threats: 34-B M.R.S. § 3862-A)*

### **CHECKLIST FOR LAW ENFORCEMENT**

Person placed in Protective Custody

Bring the person to the local hospital emergency department and the hospital starts the process for involuntary commitment.

If there is probable cause that the person in protective custody possesses, controls, or may acquire a dangerous weapon, start the process of securing a Weapons Restrict Order.

Complete Appendix 1: Officer's Statement of Probable Cause (sign and date)

Complete Page 1 of the Application for Weapons Restriction Order (sign and date)

Contact Spurwink at 207-535-2009. (If no answer, leave a voicemail and your call will be returned within 15 minutes.)

Inform Spurwink that you are seeking an assessment for a Weapons Restriction Order:

- Spurwink is probably going to want to Zoom as it is HIPAA compliant and the practitioner needs to see the person being assessed.
- Determine how Spurwink wants the forms sent, e.g., by fax or email.
- The practitioner will ask you basic questions on reason, history, known medical, etc. Be prepared to provide all information that formed the basis for your probable cause and any historical information available concerning the person being assessed.

Forward completed Appendix 1 and Application for Weapons Restriction Order (with page 1 of WRO application completed and signed) to the Spurwink assessor.

Once the person in protective custody is assessed (via cruiser phone or Zoom or another method), the practitioner will inform you if the person meets the requirements for a Weapons Restriction Order.

- If the person refuses to cooperate with an assessment, the practitioner will probably request the complainant/witness/family information from you so that



they can call and complete their documentation with as much information as possible.

The practitioner will complete Page 2 of the Application for Weapons Restriction if the person in protective custody meets the requirements for a weapons restriction order.

- If the person does not meet the requirements for an order, return the person to hospital protective custody or release the person depending on your probable cause for protective custody.
- If the person meets the requirements for a weapons restriction order, Spurwink will provide you with the application with Page 2 completed.

As soon as practicable, seek the required judicial endorsement by a Superior Court Justice, District Court Judge, Judge of Probate, or Justice of the Peace of the medical practitioner's assessment and law. (*Houlton RCC maintains a list of after-hours judicial officers. Telephone 800-924-2261.*)

- The judicial officer must complete Page 3 of the Application for Weapons Restriction Order. There is no requirement for the law enforcement officer to swear to the application and no requirement for the judicial officer to independently assess the probable cause declarations of the law enforcement officer or the likelihood of foreseeable harm.
- Assuming Pages 1 and 2 are complete, the judicial officer will endorse the application and return it to you, at which point the Notice of Service on Restricted Person may be served.
- Complete the NOTICE OF SERVICE ON RESTRICTED PERSON Form. As soon as practicable but no later than 24 hours after judicial endorsement, serve the Notice (if possible, read it verbatim to the restricted person, and obtain the person's signature on the form. If the person refuses to sign, indicate the refusal on the form.

Within 24 hours but AS SOON AS POSSIBLE:

- Notify the contact person, e.g., spouse, parent, other family member, if any.
- Report the restricted status to the Department of Public Safety via METRO by having Dispatch enter all pertinent information into the system. Dispatch will not be able to enter a docket number yet.
- As soon as possible, email the entire packet to the DA's Office of the prosecutorial district in which the restricted person resides.

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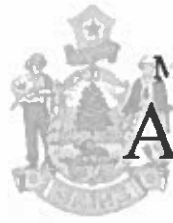
○ Once the DA's Office has the original packet, obtain a docket number for the court case. Dispatch will have to enter this into the original METRO entry.

Has the restricted person voluntarily complied with the order?

○ If the restricted person makes all practical, immediate efforts to voluntarily comply with a surrender notice, then the person is not subject to arrest or prosecution as a prohibited person under 15 M.R.S. § 393.

○ Collect any dangerous weapons if they are in your jurisdiction and enter them into evidence for safekeeping. If outside your jurisdiction, make arrangements with the law enforcement agency of jurisdiction to collect dangerous weapons.

○ If there is probable cause to believe the restricted person possesses or controls but has not surrendered a weapon(s), obtain a warrant to search and seize such weapon(s).



Maine Office of the  
**Attorney General**

## **Protocol for the Investigation of Deaths, Probable Deaths, and Missing Persons**

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### **I. BACKGROUND**

A. The purpose of this protocol is to establish procedures for law enforcement agencies in cases involving deaths, situations where death appears imminent, situations where death is reasonably suspected, and missing persons. Timely implementation of these procedures and notifications is often critical. Accordingly, this protocol and its required notifications apply to cases of death, cases when it is reasonably anticipated that death may result, cases where death is reasonably suspected, or a missing person under suspicious or unusual circumstances.

B. Technical assistance and expertise are indispensable to the successful investigation of these cases. The Office of the Attorney General and the Office of Chief Medical Examiner will continue to rely upon the State Police Major Crimes Unit as its primary death investigative arm, except in the City of Portland and the City of Bangor where the respective police department is the primary death investigative arm.<sup>1</sup>

### **II. IMPORTANCE OF DEATH SCENE CONTROL**

Control and security of the death scene is a primary focus of these procedures. Often, the medical examiner and medico-legal death investigator can gain valuable insight into the cause, manner, and circumstances of death, as well as the time of death, from viewing the scene and viewing the body at the scene. Moreover, the scene is sometimes replete with subtle clues that could aid in the identification or discovery of a perpetrator. All, or a significant part, of this evidence could be lost through inadvertent disturbance of the scene by persons lacking the required expertise.

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<sup>1</sup> References to "MCU" in this Protocol mean the State Police Major Crimes Unit and the respective criminal investigation divisions of the Portland Police Department, and the Bangor Police Department.

### III. PROCEDURES IN ALL CASES

A. Initial Procedures. The first law enforcement officer at the scene of a death, a situation involving a probable death, or a missing person under suspicious or unusual circumstances should, without disturbing the body or scene:<sup>2</sup>

1. Conduct a cursory search of the premises for the limited purpose of determining if there are perpetrators or other victims present.
2. Determine that death has in fact occurred. If there is any evidence of life, initiate all necessary life-sustaining measures.
3. Make a cursory examination of the scene to determine if the circumstances are at all suspicious. (All deaths or injuries resulting from gunshot wounds are suspicious until a thorough investigation has determined otherwise.) If the circumstances are suspicious (or there is no body, but there is a possibility that a death or foul play may have occurred), the following procedures will be followed:
  - (a) Secure and protect the scene. Do not move or otherwise disturb a body unless it is in immediate danger of destruction or further damage.
  - (b) Notify supervisors, the Office of Chief Medical Examiner, and MCU. The Office of Chief Medical Examiner will notify the Office of the Attorney General. If you wish, you may obtain the name and telephone number of the Attorney General Duty Officer from the Office of Chief Medical Examiner or the Regional Communications Center (RCC), enabling you to be in direct contact with the Duty Officer.
  - (c) Record names, addresses, telephone numbers, and other pertinent information of all persons present or assign another person to this task.
  - (d) Maintain a timetable of all persons arriving and leaving the scene.
  - (e) Unless circumstances require it, do not arrest, detain, or question a suspect without prior authorization of the MCU detective in charge or the Attorney General Duty Officer.
  - (f) If the circumstances require arresting or detaining a suspect, do not undertake questioning of the suspect without first discussing this procedure with the MCU detective in charge or the Attorney General Duty Officer. Electronically record any statements volunteered or spontaneously made by a suspect.

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<sup>2</sup> See the attached Death Investigation guide.

(g) Determine if a child has lost both parents as a result of homicide or has lost one parent and the other parent has been arrested, detained, or committed to a correctional facility or mental health facility for an offense related to a homicide, and advise MCU, which is then responsible for notifying the Maine Bureau of Child and Family Services at 800-452-1999.<sup>3</sup>

B. In a case of an accidental death, including a motor vehicle crash, contact the Office of the District Attorney and the Office of Chief Medical Examiner.

C. Deaths NOT reportable, i.e., "attended death." A death from natural causes that is has been or will be certified by a physician and is not suspicious need not be reported to the Office of Chief Medical Examiner.

D. Attendance at Examination or Autopsy. The Office of Chief Medical Examiner may arrange for a local medical examiner or medico-legal investigator to conduct an examination of a body at a local funeral home, or an autopsy may be conducted at the Office of Chief Medical Examiner in Augusta. In either situation, the investigating officer or a representative of the investigating agency should be available for the examination or autopsy so that the medical examiner or investigator is fully aware of all the known facts and circumstances regarding the scene and the investigation.<sup>4</sup>

#### IV. PROCEDURES FOR CASES WITH SPECIAL CIRCUMSTANCES

##### ***A. Fire or Explosion Death***

The State Fire Marshal is the official representative of the Attorney General in the investigation of fires or explosions resulting in a fatality. The law enforcement officer or firefighter discovering a body in a fire or following an explosion shall notify the Office of the State Fire Marshal and the Office of Chief Medical Examiner. The scene is not to be disturbed or the body moved unless the body is in immediate danger of destruction or further damage. If the case is one of suspected arson or an otherwise suspicious death, it is to be managed as any other suspicious death, which includes notifying the appropriate MCU.

##### ***B. Hunting Death***

The State Warden Service is the official representative of the Attorney General in the investigation of a hunting fatality. The law enforcement officer encountering an apparent hunting fatality shall notify the State Warden Service by calling the appropriate RCC and the Office of Chief Medical Examiner. The State Warden Service will in turn notify the appropriate MCU for assistance in conducting the investigation. The scene is not to be

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<sup>3</sup> 17-A M.R.S. § 4023

<sup>4</sup> When death has not occurred, but is probable or reasonably anticipated, the Office of Chief Medical Examiner needs the admission bloods from the first hospital where the patient was treated. Hospitals usually discard blood after seven days unless requested to preserve it. Accordingly, law enforcement must notify the OCME in such cases so that bloods are preserved in possible delayed deaths.

disturbed or the body moved unless the body is in immediate danger of destruction or further damage.

***C. Death while in custody or confinement***

1. Jail, Holding Facility, Correctional Institution. The death or probable death of an individual while in custody or confinement in a jail, holding facility, or correctional institution, regardless of the likely cause, manner, and circumstances, is to be reported immediately to the Office of Chief Medical Examiner, the appropriate MCU, and the Operations Division of the Department of Corrections. The Attorney General's Office will thereafter review all investigative results.

2. Mental Health Facility. The death or probable death of an individual while in custody or confinement as a result of an order to undergo a mental health examination<sup>5</sup>, being involuntarily committed to a mental institution following acceptance of a negotiated insanity plea or following a verdict or finding of insanity<sup>6</sup>, or having been taken into protective custody<sup>7</sup>, regardless of the likely cause, manner and circumstances, is to be reported immediately to the Office of Chief Medical Examiner and the appropriate MCU. The Attorney General's Office will thereafter review all investigative results.

***D. Deadly Force by Law Enforcement***

When a law enforcement officer uses deadly force in the performance of the officer's duties, regardless of the outcome, immediate reporting to the Investigation Division of the Attorney General's Office is required. If death was the outcome, the Attorney General's Office will contact the Office of Chief Medical Examiner.<sup>8</sup>

***E. Death While Interacting with Law Enforcement***

The death or probable death of an individual while interacting with law enforcement, regardless of the likely cause, manner, and circumstances, requires an immediate report to the Investigation Division of the Office of the Attorney General and the Office of Chief Medical Examiner.

***F. Workplace death***

The "workplace manslaughter" statute may be applicable to a situation where an employee dies in the workplace. The investigation of a workplace death is the responsibility of the responding law enforcement agency but requires an immediate report to the Office of Chief Medical Examiner. The Office of Chief Medical Examiner will notify the Office of the Attorney General and, if necessary, the appropriate MCU. It is also likely that investigators from the Occupational Health and Safety Administration

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<sup>5</sup> 15 M.R.S.A. § 101-B

<sup>6</sup> 15 M.R.S.A. § 103

<sup>7</sup> 34-B M.R.S.A. § 3862

<sup>8</sup> See the attached *Attorney General's Protocol for the Reporting of the Use of Deadly Force by a Law Enforcement Officer*.

(OSHA) or the Maine Bureau of Labor Standards (BLS) will be assigned to assist in the investigation. In the initial scene investigation, law enforcement officers should treat the situation as they would a vehicular manslaughter, securing photographs, measurements, and other evidence.

***G. Death of Child less than 3 years of age***

Sections II and III are applicable when responding to a child death. In addition to the Office of Chief Medical Examiner, MCU is to be contacted in any case of the death of a child under the age of three years. Singling out deaths of young children for special investigation is necessary because of the different technical approach and types of inquiry required in pursuing the investigations.

***H. Suicide***

1. When circumstances suggest a suicide, the Office of Chief Medical Examiner must be notified.
2. Victim less than 18 years. In addition to the COME, MCU must be notified if the victim is less than 18 years of age, or if the victim is in custody or confinement.
3. Immediately send suicide notes to the Office of Chief Medical Examiner.<sup>9</sup> If not convenient, fax a copy or email a picture while the originals take their time through the mail or other transport. Do not send such material with the body.

***I. Suspected Drug Overdose***

Cases of a suspected drug overdose resulting in death or serious bodily injury require special attention. The purpose of the investigation in each case is to determine, to the extent possible, the cause, manner, and circumstances surrounding the drug overdose, the identity of the drug involved, and the source of the drug. Furnishing scheduled drugs that result in the death or serious bodily injury of a person is a serious crime. In all cases of suspected drug overdose, the following procedures are required:

1. Notification of the Office of Chief Medical Examiner (if death has occurred or is reasonably anticipated) and the Maine Drug Enforcement Agency (MDEA).
2. The MDEA supervisor will determine if sufficient information exists to initiate an investigation into the source of the drug(s) suspected of causing the overdose. The responding agency is primarily responsible for all aspects of the investigation, to include proper crime scene processing and coordination with the Office of Chief Medical Examiner and MDEA. The MDEA supervisor will immediately notify the appropriate prosecutor of the suspected overdose and the ensuing investigation.

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<sup>9</sup> State law provides that original written or recorded material, including text messages or other electronic media, which may express suicidal intent, e.g., "suicide note," must be provided to the Office of Chief Medical Examiner. 22 M.R.S. § 3028(5). The law also declares such material to be confidential, i.e., not subject to public access.

3. A thorough scene investigation is necessary to determine the cause, manner, and circumstances surrounding the overdose. This includes witness statements, inventory of any drugs or drug paraphernalia, cell phone information, information about the victim's medical or mental health history, and identification of all known treating physicians. One aspect of an investigation is to determine if the victim possessed any drugs other than those legally prescribed.
4. Medications, illicit drugs, or substances thought to be illicit drugs at the scene are to be secured as evidence. Do not leave such evidence with the body for transport or at a funeral home. Inventory and record the evidence and fax a copy of the inventory or evidence receipt to the Office of Chief Medical Examiner at 624-7178. A proper inventory of the items includes the name of the drug, the dosage, the date of prescription, the number of pills prescribed, the number of pills remaining, the name of the prescribing physician, and the name of the dispensing pharmacy. If there is reason to believe that the victim ingested medications prescribed to someone else, those medications should likewise be inventoried. (A form for documenting this inventory is attached.)
5. The actual cause of death in suspected drug overdoses may not be readily apparent and may not be determined for several weeks pending the results of toxicology. These cases are to be investigated until the investigating agency, MDEA, and the Office of Chief Medical Examiner have determined no further investigation is necessary and/or the cause and manner of death are determined.

#### ***J. In-water Death***

Deaths of persons found in water require notification to the Office of Chief Medical Examiner and may be specially investigated because of the different technical approach and types of inquiry needed in pursuing such investigations. There are three types of categories for water-related deaths: accidental, suicidal, and homicidal. When law enforcement officers respond to the scene of an aquatic/marine related death and foul play is either obvious or suspected, the responding officer should follow this protocol as stated in Section II and III above. The decision to specially investigate will be made on a case-by-case basis by the Office of Chief Medical Examiner, usually in collaboration with an appropriate police authority and the Attorney General's Office. Even when not specially investigated, an investigation is still necessary as in any medical examiner case.



***K. Missing Person***

1. In addition to the requirements set out in state law in the Missing Children Act,<sup>10</sup> the report of a missing person – child or otherwise – requires within two hours of the report the issuance of a File 6 and inclusion in the National Crime Information Center (NCIC). Notification of MCU is required if there are suspicious or unusual circumstances. An example of “unusual circumstances” is a reported absence under circumstances inconsistent with established patterns of behavior.

2. State law also requires that the Office of Chief Medical Examiner maintain information on missing persons.<sup>11</sup> Accordingly, if a person reported as missing is not located within 24 hours of the report, notification to the Office of Chief Medical Examiner is required.

***L. Line-of-duty death of a firefighter.***

It is imperative to notify the Office of the State Fire Marshal as soon as possible in the event of the death of a firefighter in the line of duty. The federal Public Safety Officers Benefits (PSOB) Program provides death and education benefits to survivors of fallen firefighters, and the State Fire Marshal is the entity that carries out the provisions of a Line-of-Duty Death Response Plan that will assure compliance with the requirements of the PSOB Program.

**V. PUBLIC STATEMENTS**

Only the Office of the Attorney General is authorized to disseminate information or public statements in homicide or suspected homicide cases. The appropriate MCU may disseminate information in these cases only after consultation with and approval of the Office of the Attorney General.

A. Examples of information that may be released in investigations covered by this Protocol, other than homicide or suspected homicide cases:

1. Unless confidential pursuant to law, the identity of a victim, if confirmed and not in question, after notification of family or next of kin. If there is any question as to the identity, the information remains confidential.
2. Information regarding the cause, manner, and circumstances of a death, but only with authorization of and after consultation with the Office of Chief Medical Examiner and the Office of the Attorney General.
3. A brief description, e.g., hunting fatality, suspicious death, accident, time, and place, whether the investigation is in progress, and the identity of the investigating agency.

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<sup>10</sup> 25 M.R.S. chapter 257.

<sup>11</sup> 22 M.R.S. § 3034.

4. A warning to the public of any dangers.
  5. A request for assistance in apprehending a suspect or assistance in other matters if the information released is limited to accomplishing that purpose.
  6. The name of a person charged (except a juvenile), age, residence, employment, and marital status.
  7. The circumstances immediately surrounding an arrest or charge, including the time and place of the arrest, resistance, pursuit, and possession and use of weapons.
  8. The substance or text of the charge, such as a complaint or formal accusation.
  9. Information contained in a public record, stated so as to attribute the information to a public record.
  10. The scheduling or result of any step or action in the judicial proceeding.
- B. The following types of information should not be released:
1. Information as to the character, reputation, or prior criminal record or mental health history of an accused person or a prospective witness.
  2. Admissions, confessions, or a statement or alibi attributable to any accused person, except as otherwise contained in a public record.
  3. The performance or results of tests or the desire, agreement, or refusal of the accused or any potential witness to take or perform a test, including a polygraph examination.
  4. Statements or information concerning the credibility or anticipated testimony of prospective witnesses.
  5. The possibility of a plea to the offense charged or to a lesser offense, or other disposition.
  6. Opinions concerning evidence or arguments in the case, whether or not it is anticipated that such evidence or arguments will be used at trial.
  7. Opinions as to the guilt of the accused, the evidence, or the merits of the case.
  8. General Rule: DO NOT COMMENT ON THE EVIDENCE.

Dated: April 15, 2021

AARON M. FREY  
Attorney General